535

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 231. 94.

THE SARANAC LAND AND TIMBER COMPANY, PLAINTIFF IN ERROR,

vs.

JAMES A. ROBERTS, AS COMPTROLLER OF THE STATE OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED JUNE 20, 1896.

(16,916.)

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JAMES A. ROBERTS, AS COMPTROLLER OF THE STATE OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 2, 1898.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the northern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between The Saranac Land and Timber Company, plaintiff, and James A. Roberts, as comptroller of the State of New York, a manifest error hath happened, to the great damage of the said The Saranac Land and Timber Company, as is said and appears by its complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 23 day of June, 1898, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Seal of the U. S. Circuit Court, Northern District N. Y.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 24 day of May, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

W. S. DOOLITTLE,
Clerk of the Circuit Court of the United States of America for the Northern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

ALFRED C. COXE, *U. S. J.*

2 [Endorsed:] 3110. Supreme Court of the United States. The Saranac Land and Timber Company, plaintiff in error, *vs.* James A. Roberts, as comptroller, &c., defendant in error. Writ of error. Weeds, Smith & Conway, attorneys for plaintiff in error, Plattsburgh, N. Y. Due service of a copy of the within writ of error is hereby admitted this — day of ——, 189–. —— ——, attorney for defendant in error. U. S. circuit court, N. D. of N. Y. Filed May 24, 1898. W. S. Doolittle, clerk. D. C. N.

UNITED STATES OF AMERICA, *Northern District of New York,* } ss:

I, W. S. Doolittle, clerk of the circuit court of the United States of America for the northern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from 3 to 71, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of The Saranac Land and Timber Company, plaintiff in error, against James A. Roberts, as comptroller of the State of New York, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Utica, in the northern district of New York, in the second circuit, this eleventh day of June, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

Seal of the U. S. Circuit Court, Northern District N. Y.

W. S. DOOLITTLE, *Clerk.*

3 Circuit Court of the United States for the Northern District of New York.

THE SARANAC LAND AND TIMBER IMPROVEMENT Company *against* JAMES A. ROBERTS, as Comptroller of the State of New York. } Complaint. N. W. ¼, T. 24.

The plaintiff above named, by Weeds, Smith & Conway, its attorneys, complains of the defendant and alleges on information and belief:

I. That it is a foreign corporation duly organized and existing under and by virtue of the laws of the State of New Jersey and is a citizen and resident of said State.

II. That the defendant is the comptroller of the State of New York and is a citizen of the State of New York and a resident of the northern district thereof.

III. That plaintiff is seized in fee-simple and entitled to the possession of the following-described lands—that is to say: All that tract of land situate in the northern district of the State of New York, in the county of Franklin and town of Harriettstown, known as and being the northwest quarter of township number
4 twenty-four (24), in Great lot one (1), of Macomb's purchase, containing seven thousand five hundred acres, more or less, and the same being wild, vacant, or forest land.

IV. That defendant, as comptroller of the State of New York, is now in the actual possession of said lands and unlawfully withholds possession of the same from the plaintiff.

Wherefore the plaintiff demands judgment:

1. For the possession of the said premises.

2. For twenty-five hundred dollars, the damages sustained by plaintiff by the withholding of the same.

3. For the costs and expenses of this action.

WEEDS, SMITH & COMPANY,
Attorneys for Plaintiff, Plattsburgh, New York.

STATE OF NEW YORK,
Southern District of New York, City and County of New York, } ss:

Frank Walling, being duly sworn, says that he is an officer and the president of The Saranac Land and Timber Company, the plaintiff above named; that he has read the foregoing complaint and knows the content- thereof, and that the same is true of his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

FRANK WALLING.

Sworn to before me this 23d day of Jan'y, 1895.

[L. S.]

THOMAS TIERNEY,
Notary Public, Kings Co., N. Y.

Ctf. filed in N. Y. Co.

Indorsed: Complaint. Filed Jan. 25, 1895. W. S. Doolittle, clerk.

5 Circuit Court of the United States for the Northern District of New York.

THE SARANAC LAND AND TIMBER COMPANY
against
JAMES A. ROBERTS, as Comptroller of the State of New York.

To William S. Doolittle, Esq., clerk of the United States court for the northern district of New York:

You will please enter my appearance for the defendant, James A. Roberts, comptroller of the State of New York, in the above-entitled suit.

Dated, Albany, February 14th, 1895.

T. S. HANCOCK,
Attorney General of the State of New York, Solicitor and of Counsel for Def't, James A. Roberts, as Comptroller of the State of New York.

Indorsed: Notice of appearance. Filed Mar. 9, 1895. W. S. Doolittle, clerk.

6 *Demurrer.*

Circuit Court of the United States for the Northern District of New York.

THE SARANAC LAND AND TIMBER COMPANY
against
JAMES A. ROBERTS, as Comptroller of the State of New York.

The demurrer of the above-named defendant, James A. Roberts, as comptroller of the State of New York, to the bill of complaint of the above-named plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things contained in said bill of complaint to be true in such manner and form as the same herein set forth are alleged, demurs to said bill, and for causes of demurrer showeth:

First. That it appeareth by the plaintiff's own showing by said bill that he is not entitled to the relief demanded by the said bill against this defendant.

Second. That it appears by said bill that the court has no jurisdiction of the defendant, James A. Roberts, as comptroller of the State of New York, nor of the State of New York, who, by James A. Roberts, as comptroller, is the real party whose interests are affected by said suit.

7 Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant doth demur thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any answer to said bill, and humbly prays to be hence dismissed with reasonable costs in this behalf.

Dated March 8th, 1895.

T. E. HANCOCK,
Attorney General of the State of New York, Solicitor and of Counsel for Defendant, James A. Roberts, as Comptroller of the State of New York.

Office and post-office address, Capitol, Albany, N. Y.

STATE OF NEW YORK,
City and County of Albany, Northern District of New York, } *ss:*

Willis E. Merriman, being duly sworn, doth depose and say that I am the 2nd deputy comptroller of the State of New York; that the foregoing demurrer is not interposed for delay.

WILLIS E. MERRIMAN.

Sworn to before me this 8th day of March, 1895.

JOHN J. HART,
Notary Public, Rens. Co.

Certificate filed in Albany Co.

Indorsed: Demurrer. Filed Mar. 9, 1895. W. S. Doolittle, clerk.

8 *Order.*

At a special term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at the U. S. court-house, in the city of Utica, on the 28th day of June, A. D. 1895.

Present: The Honorable Alfred C. Coxe, judge.

THE SARANAC LAND AND TIMBER COMPANY
v.
JAMES A. ROBERTS, as Comptroller of the State of New York.

The defendant having demurred to the complaint herein and the same having come on for argument at a stated term of this court, held at the village of Canandaigua, on the 18th day of June, 1895, after hearing Mr. G. D. B. Hasbrouck, deputy attorney general of the State of New York, in favor of said demurrer, and Mr. Frank Smith, opposed, it is—

Ordered that the demurrer be, and it is hereby, overruled. The defendant may have thirty days from the date of the service of a copy of this order in which to answer said complaint.

ALFRED C. COXE, *U. S. J.*

Indorsed: Order. Filed Jun- 28, 1895. W. S. Doolittle, clerk.

9 Circuit Court of the United States for the Northern District of New York.

THE SARANAC LAND & TIMBER COMPANY, Plaintiff,
vs.
JAMES A. ROBERTS, as Comptroller of the State of New York, Defendant.

No. 3110. N. W. ¼, Twp. 24.
Amended Answer.

The defendant, James A. Roberts, the comptroller of the State of New York, by Theodore E. Hancock, attorney general of the State of New York, his attorney, answering the complaint of the plaintiff, by this his amended answer:

I.

Admits that the said James A. Roberts is the comptroller of the State of New York, and that he is a citizen of the State of New York and a resident of the northern district of New York, but said defendant denies each and every allegation of the complaint not herein expressly admitted.

II.

For a further and separate defense, this defendant alleges upon information and belief that the people of the State of New York are the owners in fee of all the lands described in the complaint, and are and have been at all times for more than two years last past

lawfully in the actual possession thereof by virtue of a cer-
10 tain certificate or certificates of tax sales duly made and executed by the comptroller of the State of New York on or about the 12th day of October, 1877, to the people of the State of New York in pursuance of certain tax sales made by said comptroller, at Albany, in said State, on or about the day last above mentioned, for the non-payment of non-resident taxes which had been duly assessed and levied upon the said lands described in said complaint, which said certificate or said certificates were outstanding and had remained in force for two years after the last day allowed by law to redeem from such sales, in conformity with the provisions of the statutes of the State of New York and by virtue of a certain conveyance duly executed to the people of the State of New York, the purchasers at the hereinbefore-mentioned tax sales, at the expiration of the two years allowed by law for redemption (within which time no person had redeemed the same), by James W. Wadsworth, comptroller of the State of New York, on or about the 9th day of June, 1881, which said conveyance was duly recorded in the office of the clerk of said county of Franklin on the 8th day of June, 1882, in Liber 68 of Deeds, at page 148, &c.; that each and every of said proceedings were in due form of law and in pursuance of the statutes of the State of New York regulating the sale of lands for unpaid taxes.

III.

For a further and separate defence this defendant alleges upon information and belief that the people of the State of New
11 York are the owners in fee of all the lands described in the complaint, and are and have been at all times for more than two years last past lawfully in the actual possession thereof by virtue of certain other certificates of tax sales duly made and executed by the comptroller on or about the 15th day of November, 1881, to the people of the State of New York, in pursuance of certain tax sales made by said comptroller, at Albany aforesaid, on or about the day last above mentioned, for the non-payment of non-resident taxes, which had been duly assessed and levied upon the lands described in said complaint, which said certificates were outstanding and had remained in force for two years after the last day allowed by law to redeem from such sales, in conformity with the provisions of the statutes of the State of New York and by virtue of a certain other conveyance duly executed to the people of the State of New York, the purchaser- at said last-mentioned sales, at the expiration of the two years allowed by law for redemption (within which time no person had redeemed the same), by Alfred C. Chapin, as the comptroller of the State of New York, on or about the 31st day of October, 1884, which said conveyance was duly recorded in the office of said county of Franklin on March 5, 1887, in Liber 79 of Deeds, at page 265, &c., in conformity with said acts of said legislature; that each and every of said proceedings were in due form of law and in pursuance of the statutes of the State of New York regulating the sale of lands for unpaid taxes.

IV.

For a further and separate defense this defendant alleges
12 upon information and belief that the people of the State of New York are the owners in fee of all the lands described in the complaint and have been at all times during the two years last past, and now are, lawfully in the actual possession thereof by virtue of certain other certificates of tax sales duly made and executed by the comptroller of said State on or about the 14th day of December, 1885, to the people of the State of New York aforesaid, on or about the day last above mentioned, for the non-payment of non-resident taxes which had been duly assessed and levied upon the lands described in said complaint, which said certificates were outstanding and had remained in force for two years after the last day allowed by law to redeem from such sales in conformity with the provisions of the statutes of the State of New York, and by virtue of a certain other conveyance, duly executed by the people of the State of New York, the purchaser- at said last-mentioned sale, at the expiration of the two years allowed by law for redemption (within which time no person had redeemed the same), by Edward Wemple, as the comptroller of said State, on or about the 15th day of February, 1890, which said conveyance was duly recorded in the office of the clerk of said county of Franklin on the 3rd day of March, 1891, in Liber 89 of Deeds, at page 54, &c., in conformity with said acts of the said legislature; that each and every of said proceedings were in due form of law and in pursuance of the statutes of the State of New York regulating the sale of lands for unpaid taxes.

13 V.

For a further and separate defense this defendant alleges upon information and belief that the people of the State of New York are the owners in fee of all the lands described in the complaint, except one thousand acres in the N. W. corner of the N. W. quarter of said township 24, Great tract No. 1, of Macomb's purchase, in the town of Harriettstown, Franklin county, N. Y., and are and have been at all times during the two years last past lawfully in the actual possession thereof by virtue of a certain other certificate or certificates of tax sales duly made and executed by the comptroller of said State on or about the 23rd day of December, 1890, to the people of the State of New York, in pursuance of certain tax sales made by said comptroller, at Albany aforesaid, on or about the day last above mentioned, for the non-payment of non-resident taxes which has been duly assessed and levied upon the lands described therein; which said certificate or certificates were outstanding and had remained in force for two years after the last day allowed by law to redeem from such sales in conformity with the provisions of said acts of said legislature.

VI.

For a further and separate defence this defendant alleges that this action was not commenced within the time required by statute, and was not commenced until more than six months after the passage of the acts, chapter 448, Laws of 1885; chapter 217,
14 Laws of 1891, and chapter 711, Laws of 1893; and defendant therefore alleges that the action was not commenced within the time prescribed by law and is barred by the statute of limitations.

VII.

For a further and separate defence this defendant alleges upon information and belief that the plaintiff, on or about the 31st day of December, 1894, bought, procured, and took a promise from one Frank E. Smith, of Plattsburgh, N. Y., to convey a right or title, real or pretended (being the same title alleged in the complaint), to the lands and tenements described in the complaint, knowing that the said Frank E. Smith, the grantor thereof and the person making said covenant or promise, had not been in possession, and that he and those by whom he claimed had not, nor had either or any of them, been in the possession of the same or of the reversion or remainder thereof, and had not taken the rents and profits thereof for the space of one year before such covenant or promise was made.

VIII.

For a further and separate defence this defendant alleges upon information and belief that at the time of the delivery of the said deed from said Smith to the plaintiff of the lands described in the complaint, which deed was delivered on or about the 31st day of December, 1894, *and* the lands therein described and attempted to be conveyed, being the premises described in the complaint
15 herein, were and had been — a long time prior thereto in the actual possession of the people of the State of New York, claiming under a title adverse to that of said Smith and his grantor, and that said deed from said Smith to plaintiff was therefore void.

IX.

For a further and separate defence this defendant alleges upon information and belief that the plaintiff organized as a pretended corporation under the laws of the State of New Jersey, and had not otherwise organized, for the illegal purpose of bringing ejectment suits in said court against the defendant herein after it should have bought a pretended title to the property described in the complaint, and that this action was commenced in pursuance of such corrupt and illegal purpose.

X.

For a further and separate defence this defendant alleges upon information and belief that the alleged incorporators of the plaintiff organized as a pretended corporation under the laws of the State of

New Jersey for the illegal purpose of buying the right or title of said Frank E. Smith to the lands described in the complaint, knowing that the said Smith had not been in possession thereof, and that those from whom said Smith claimed to have derived title, or either of them, had not been in the possession thereof, or of the reversion or remainder thereof, and had not taken the rents and profits thereof for the space of one year before the covenant or promise to purchase thereafter taken and accepted was made, and knowing that the
16 said lands described in the complaint were in the actual possession of the State of New York, claiming under a title adverse to that of said Smith, and that said plaintiff has no assets or property other than its pretended paper title to the lands in the N. E. and N. W. quarters of said township 24, including the premises described in the complaint.

XI.

For a further and separate defence this defendant alleges that the plaintiff, on or about the 31st day of December, 1894, took a conveyance of the lands and tenements described in the complaint herein or of an interest therein from one Frank E. Smith, who at that time was not, nor had he ever been, in the possession thereof or of any part thereof; that on the said 31st day of December, 1894, and for a long time previous thereto the said lands and tenements were and still are the subject of controversy by proceedings brought by the grantors of the plaintiff and other persons claiming an interest in said lands before the comptroller of the State of New York for the cancellation of the tax sales under which the people of the State of New York hold title to said premises, and that said proceedings are still pending undetermined before said comptroller, and that the said plaintiff at the time of taking such conveyance well knew of the pendency of such proceedings, and that the grantor was not in possession of such lands or tenements or any part thereof, and that said proceedings so pending before said comptroller constitute a bar to this action.

17 XII.

For a further and separate defence this defendant alleges that Frank E. Smith, the grantor of the plaintiff, on or about the 21st day of December, 1894, took two certain conveyances of the lands and tenements described in the complaint herein or of an interest therein from Lelia E. Marsh, Pelatiah J. Marsh, George N. Ostrander, Smith M. Weed, Martin V. B. Turner, Emma Turner, John B. Riley, and A. Genevieve Riley; that at the time last above mentioned the said grantors to said Smith were not, nor were either of them, in the possession thereof or of any part thereof, nor had they — either of them ever been in the possession thereof or of any part thereof; that on the said 21st day of December, 1894, and for a long time previous thereto the said lands and tenements were and still are the subject of controversy by proceedings brought by the grantors of the plaintiff and other persons claiming an interest in said lands before the comptroller of the State of New York for the

cancellation of the tax sales under which the people of the State of New York hold title to said premises, and that said proceedings are still pending undetermined before said comptroller, and that the said plaintiff at the time of taking such conveyance well knew of the pendency of such proceedings, and that the grantor was not in possession of such lands or tenements or any part thereof, and that said proceedings so pending before said comptroller constitute a bar to this action.

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XIII.

For a further and separate defence this defendant alleges upon information and belief that on or about the 21st day of December, 1894, one Frank E. Smith, the grantor of the plaintiff, bought, procured, and took promises from Lelia E. Marsh, Pelatiah J. Marsh, George N. Ostrander, Smith M. Weed, Martin V. B. Turner, Emma Turner, John B. Riley, and A. Genevieve Riley to convey a right or title, real or pretended (being the same title alleged in the complaint), to the lands and tenements described in the complaint, knowing that the said grantors and the persons making said covenants or promises had not been in possession, and that they and those by whom they claimed had not, nor had either or any of them, been in the possession of the same or of the reversion or remainder thereof, and had not taken the rents and profits thereof for the space of one year before such covenants or promises were made.

XIV.

For a further and separate defense this defendant alleges upon information and belief that at the time of the delivery of the said deeds from said Lelia E. Marsh, Pelatiah J. Marsh, George N. Ostrander, Smith M. Weed, Martin V. B. Turner, Emma Turner, John B. Riley, and A. Genevieve Riley to the said Frank E. Smith, the grantor of said plaintiff, of the lands described in the complaint, which deeds were delivered on or about said 21st day of December, 1894, and the lands therein described and attempted to be

19 conveyed, being the premises described in the complaint herein, were and had been for a long time prior thereto in the actual possession of the people of the State of New York, claiming under title adverse to that of said grantors of said Frank E. Smith and to that of their grantors, and that said deeds to said Frank E. Smith were therefore void.

XV.

For a further and separate defence this defendant alleges upon information and belief that on or about the 29th day of November, 1885, one Frank E. Smith, the grantor of plaintiff, claiming to be the owner of the premises described in the complaint herein, made and filed his verified application in writing to the comptroller of the State of New York for the cancellation of the tax sales of 1877 and 1881 of said lands under which the people of the State of New York derives title thereto, and that thereafter such proceedings were had

before such comptroller that the said comptroller (with the consent of the said applicant), on or about the 2nd day of December, 1885, duly denied the said application upon the merits thereof, and that no proceedings were thereafter taken by said Frank E. Smith, or any other person, to review such determination, and that the time within which to review such determination has expired, and that uch determination is a bar to this action.

20 Wherefore said defendant demands judgment that the said complaint be dismissed with costs.

T. E. HANCOCK,
Attorney General of the State of New York and Attorney for said James A. Roberts, as Comptroller of said State, Defendant, Capitol, Albany, N. Y.

STATE OF NEW YORK,
Northern District of New York, } *ss:*
City & County of Albany,

James A. Roberts, being duly sworn, says that he is the defendant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

JAMES A. ROBERTS.

Sworn to before me this 20th day of February, 1896.

WILLIS E. MERRIMAN,
[L. S.] *Notary Public.*

Indorsed: Amended answer. (N. W. ¼, tp. 24.) Filed Feb. 21, 1896. W. S. Doolittle, clerk.

21 U. S. Circuit Court, Northern District of New York.

SARANAC LAND AND TIMBER COMPANY
against
JAMES A. ROBERTS, as Comptroller of the State of New York. } Law. 3110.

It is hereby stipulated, pursuant to section 649 of the Revised Statutes of the United States, that the issues of fact in this action be tried and determined by the court without the intervention of a jury, and the parties to this action hereby waive a jury.

Dated March 31, 1895.

G. D. B. HASBROUCH,
Dep. Att'y Gen.
WEEDS, SMITH & CONWAY,
Att'ys for Pl'ff.

Indorsed: Stipulation waiving jury. Filed Mar. 31, 1896. W. S. Doolittle, clerk.

22 U. S. Circuit Court, Northern District of New York.

SARANAC LAND AND TIMBER COMPANY *against* JAMES A. ROBERTS, as Comptroller. } No. 3110.

Plaintiff's Requests for Rulings on Propositions of Law.

148 U. S., 92. Plaintiff requests the court to declare as matter of law upon the whole case that it is entitled to judgment for the recovery of an estate in fee-simple in the northwest quarter of township 24, Great
Declined. A. C. C. tract one, Macomb's purchase, except one thousand acres thereof, to be laid out in a square form, in the northwest corner of said quarter, and for the recovery of possession of the same.

If the court shall decline to make the ruling above requested, or if it shall rule as a matter of law that de-
7 Blatch., 51; 9 Wall., 125. fendant is entitled to judgment, then plaintiff requests the court to affirm each of the following propositions of law, each of which is separately submitted and as a separate and distinct request, independent of the others.

Declined. A. C. C. First. Assuming that the sale by the comptroller of the tract of land in controversy was made as one parcel for the aggregate unpaid taxes of
23 several years, which taxes were assessed against separate and distinct parcels of the tract sold, such sale was not authorized by law in 1877. Such mode of sale is a jurisdictional defect in the proceedings, and a sale so made is void and is not cured or validated by chapter 448 of the laws of 1885 or chapter 711 of the laws of 1893.

Second. Assuming that the sale by the comptroller of the tract of land in controversy was made as one parcel for the aggregate unpaid taxes of several years, during one or more of which years a part of the tract sold was not assessed or
Declined. A. C. C. taxed at all, such sale was not authorized by law in 1877; such mode of sale is a jurisdictional defect in the proceedings, and a sale so made is void and is not cured or validated by chapter 448 of the Laws of 1885 or chapter 711 of the Laws of 1893.

Assuming that the proof shows a sale by the comptroller of a tract of land as one parcel for the aggregate unpaid taxes of several years, some of which taxes were assessed against the whole tract sold and others against a part of the tract only,
Declined. A. C. C. such sale was not authorized by law in 1877; such mode of sale would be a jurisdictional defect in the proceedings, and a sale so made is void and is not cured or validated by chapter 448 of the Laws of 1885 or chapter 711 of the laws of 1893.

Fourth. An assessment of non-resident land
I so rule. A. C. C. for taxation must describe the land to be taxed so that the parcel taxed can be identified and
24 distinguished, and a failure to so describe the land to be taxed is a jurisdictional defect in the proceedings, and if land be sold by the comptroller to enforce payment of taxes so assessed, the sale is void and is not cured or validated by chapter 448 of the Laws of 1885 or chapter 711 of the Laws of 1893.

Fifth. If the court shall find that the sale of the land in question at the 1877 tax sale was made for the unpaid taxes of 1866, 1867, 1868, 1869, and 1870, and that the taxes for the years 1868, 1869, and 1870, as against a parcel of 5,285 acres of the tract sold, were based upon an assessment of the said parcel in which it was described as follows:

"Township 24, Great tract 1, Macomb's pur-
Declined. A. C. C. chase, N. W. ¼, excepting one thousand acres lying in the N. W. corner; also 1,215 acres which is water, leaving 5,285 acres";

And if the court shall also find that the area of land covered by water in said northwest quarter, outside of the one thousand acres in the northwest corner, was substantially more or less than 1,215 acres, then such description was not sufficient to identify the parcel assessed with reasonable certainty, and the taxes based upon such assessment were void and the sale of 1877 was also void; such assessment was a jurisdictional defect in the proceedings, and the sale was not cured or validated by chapter 448 of the laws of 1885 or by chapter 711 of the laws of 1893.

25 Sixth. If the court shall find that the taxes of 1868, as against a parcel of one thousand acres of the tract
Declined. A. C. C. sold at the 1877 sale, were based upon an assessment in which said parcel was described as follows:

"Macomb's purchase, Great tract one, township 24, northwest corner of northwest quarter, 1,000 acres";

And that the taxes of 1879 and 1870 against said parcel were based upon assessments in which it was described as follows:

"Great tract No. 1, Macomb's purchase, township 24 1,000 acres lying in the northwest corner of the northwest quarter";

Then such description was not sufficient to identify the parcel assessed with reasonable certainty and the taxes based thereon were void; and if the sale of 1877 was made for such taxes, as well as the taxes of other years, such sale was also void; such assessment was a jurisdictional defect in the proceedings, and the sale was not cured or validated by chapter 448 of the Laws of 1885 or by chapter 711 of the Laws of 1893.

Seventh. If the court shall find that at the sale of 1881 the comptroller treated the land in question as already
Declined. A. C. C. the property of the State and struck the same off to the State without giving any opportunity for other persons to bid thereon, then the State acquired no title by reason of such sale, and such sale was not validated or made

effectual by chapter 448 of the Laws of 1885 or chapter 711 of the Laws of 1893.

26 Eighth. Chapter 448 of the Laws of 1885 is unconstitutional and void and is repugnant to the 14th amendment of the Constitution of the United States.

Declined. A. C. C.

WEEDS, SMITH & CONWAY,
Attorneys for Plaintiff, Plattsburgh, N. Y.

Indorsed: Plaintiff's requests for rulings on propositions of law. Filed Dec. 11, 1897. W. S. Doolittle, clerk.

27 U. S. Circuit Court, Northern District of New York.

SARANAC LAND AND TIMBER COMPANY, Plaintiffs,
against
JAMES A. ROBERTS, as Comptroller, Defendant. } No. 3110.

Plaintiff's Exceptions.

First. The plaintiff hereby excepts to the refusal of the court to declare, as matter of law, upon the whole case that it is entitled to judgment for the recovery of an estate in fee-simple in the northwest corner of township 24, Great tract one, Macomb's purchase, except one thousand acres thereof, to be laid out in a square form, in the northwest corner of said quarter, and for the recovery of the possession of the same.

Second. The plaintiff excepts to the refusal of the court to affirm the first proposition of law submitted to it by the plaintiff.

Third. The plaintiff excepts to the refusal of the court to affirm the second proposition of law submitted to it by the plaintiff.

Fourth. The plaintiff excepts to the refusal of the court to affirm the third proposition of law submitted to it by the plaintiff.

28 Fifth. Plaintiff excepts to the refusal of the court to affirm the fifth proposition of laws submitted to it by plaintiff.

Sixth. Plaintiff excepts to the refusal of the court to affirm the sixth proposition of law submitted to it by the plaintiff.

Seventh. The plaintiff excepts to the refusal of the court to affirm the seventh proposition of law submitted to it by the plaintiff.

Eighth. The plaintiff excepts to the refusal of the court to affirm the eighth proposition of law submitted to it.

WEEDS, SMITH & CONWAY,
Attorneys for Plaintiff, Plattsburgh, N. Y.

Indorsed: Plaintiff's exceptions. Filed Dec. 11, 1897. W. S. Doolittle, clerk.

29 United States Circuit Court, Northern District of New York.

THE SARANAC LAND AND TIMBER COMPANY, Plaintiff,
vs.
JAMES A. ROBERTS, as Comptroller of the State of New York, Defendant.

The issues in this action having been regularly brought on for trial before Hon. Alfred C. Coxe, at a term of the United States circuit court, held at Utica, N. Y., on the 30th day of March, 1896, and the court having heard the allegations and proofs of the parties and the argument of counsel, and, after due deliberation, having duly made, on the 12th day of November, 1897, a decision against the plaintiff, containing a statement of the facts found and conclusions of law thereon, directing a judgment against the plaintiff, as hereinafter stated, and the defendant's costs and disbursements having been duly adjusted at $367.76:

Now, on motion of T. E. Hancock, attorney for defendant—

It is adjudged that at the time of the commencement of this action the plaintiff was not entitled to the possession of the premises described in the complaint, but that the State of New York and the people thereof were the owners in fee-simple and entitled to
30 the possession of said real estate, and that the plaintiff's complaint be, and the same hereby is, dismissed upon the merits, and that the defendant do recover of the said plaintiff the said sum of $367.76, costs and disbursements.

Judgment signed, entered, and docketed this 17th day of February, 1898, at ten o'clock in the forenoon.

W. S. DOOLITTLE, *Clerk*,
By C. W. HIGGISON, *Deputy*.

Indorsed: Judgment. Sir: Take notice that the within is a copy of judgment duly filed and entered in the office of the clerk of the U. S. circuit court for the northern dist. of N. Y. on the — day of December, 1897. Yours, etc., T. E. Hancock, attorney general, attorney for def't. To Weeds, Smith & Conway, attorney for pl'ff.

Indorsement on cover: Law. No. 3110. United States circuit court, northern district of New York. The Saranac Land and Timber Company *v.* James A. Roberts, as comptroller of the State of New York. Judgment-roll. T. E. Hancock, attorney for def't. Costs, $367.76. Judgment signed, entered, and docketed February 17, 1898, at 10 o'clock a. m. W. S. Doolittle, clerk, by C. W. Higgison, deputy.

31 *Bill of Exceptions.*

United States Circuit Court, Northern District of New York.

THE SARANAC LAND AND TIMBER COMPANY
against
JAMES A. ROBERTS, as Comptroller of the State of New York. } Law. 3110.

Be it remembered that afterwards, to wit, on the 30th and 31st days of March, 1896, at a term of this court held by the Honorable Alfred C. Coxe, district judge, the issues in the above-entitled action came on for trial before the said judge and a jury, and upon such trial the following proceedings were had:

The plaintiff appeared by Mr. Frank E. Smith, Mr. Thomas F. Conway, and Mr. T. S. Jones, as counsel, and the defendant appeared by the Honorable G. D. B. Hasbrouck, deputy attorney general; Mr. Edward H. Leggett, and Mr. John H. Burke, as counsel.

The plaintiff, to maintain the issues on its part, gave evidence tending to prove that it was authorized by the State of New York to do business in this State, and had paid the license fee required by law; that the northwest quarter of township 24, Great tract No. one of Macomb's purchase, containing seven thousand five
32 hundred acres of land, more or less, being the land described in the complaint, was granted in fee-simple by the people of the State of New York, in the year 1798, to Daniel McCormack by letters patent, and that a paper title in fee to the said parcel of land (except one thousand (1,000) acres in the northwest corner thereof, the particular location of said 1,000 acres not being described in several of the deeds thereof) had passed by various mesne conveyances to, and at the time this action was begun was vested in, the plaintiff, "except that one of said conveyances in the plaintiff's chain of title was not produced in evidence, but only a certified copy of the record thereof in Jefferson county, where other lands therein described were situated, was produced, and that no evidence was offered accounting for failure to produce the original deed, nor was any parole evidence offered as to the contents of the original, and no proof of actual possession of said lands or any part thereof by plaintiff or any of his grantors was offered;" that the said land was wild, vacant forest land and was situated in the town of Harrietstown, Franklin county, New York; that in December, 1894, the defendant, as comptroller of the State of New York, caused to be published in the "Adirondack News," a newspaper published in Franklin county, New York, a notice in the words and figures following:

State Lands—Comptroller's Notice as to Ownership.

"To whom it may concern:

"Notice is hereby given that the following is the list of wild, vacant forest lands located in the county of Franklin to

which the State holds title, and that from and after three weeks from the 22nd day of December, 1894, possession thereof will be deemed to be in the comptroller of this State, pursuant to the provision of section 13, chapter 711, Laws of 1893.

"WILLIAM J. MORGAN,
"*Deputy Comptroller.*"

That the list of lands attached to and published with said notice contained the northwest quarter of township 24, Great tract one, Macomb's purchase; that said notice was published in said newspaper once a week for three successive weeks, beginning on December 22, 1894, and that this action was begun on January 29th, 1895. Plaintiff having rested its case, defendant, to maintain the issues on his part, gave evidence tending to prove that the land in question was sold by the comptroller for unpaid taxes, at the tax sale of 1877, to the people of the State of New York, and gave in evidence the certificate issued by the comptroller upon such sale, dated October 18th, 1877, showing the sale by the comptroller to the people of the State of New York for the unpaid taxes of 1866 to 1870, inclusive, of the northwest quarter of township 24, Great tract one, Macomb's purchase, for the sum of $2,756.40, and also gave in evidence the deed executed by the comptroller to the people of the State of New York in pursuance of the 1877 tax sale, dated June 9th, 1881; recorded in Franklin county clerk's office June 8th, 1882; which deed was in the usual form of deeds made by the comptroller upon sales of land for taxes, and purported to convey to the people
34 of the State of New York the northwest quarter of township 24, Great tract one, Macomb purchase.

Defendant then gave evidence tending to prove that the land in question, or 5,285 acres thereof, together with one thousand acres in this N. W. corner of said N. W. quarter, was again sold by the comptroller for unpaid taxes, at the tax sale of 1881, to the people of the State of New York, and gave in evidence two certificates issued by the comptroller upon said sale, each dated November 23rd, 1881, one of which showed the sale by the comptroller to the people of the State of New York, for the unpaid taxes of 1871, 1872, 1873, 1874, 1875, and 1876, of a parcel of land therein described as follows:

"Macomb's purchase, Great tract one, township 24, northwest ¼, ex. 1,000 a. N. W. cor. and 1,215 a. water, 5,285 acres," for the sum of $1,259.38; the other of which certificates showed the sale by the comptroller to the people of the State of New York, for the unpaid taxes of 1871, 1872, 1873, 1874, 1875, and 1876, of a parcel of land therein described as follows, viz:

"Macomb's purchase, Great tract one, township 24, northwest ¼, N. W. cor., 1,000 acres," for the sum of 241.27.

Defendant then offered in evidence the deed made by the comptroller to the people of the State of New York, in pursuance of the 1881 tax sale, dated October 31st, 1884; recorded in Franklin county clerk's office March 5th, 1887; which deed was in the usual form of deeds made by the comptroller upon tax sales, and which purported

to convey to the people of the State of New York two parcels
35 of land in the northwest quarter of township 24 by the following descriptions:

"Macomb's purchase, Great tract one (1), township twenty-four (24), northwest one-quarter (¼), five thousand two hundred and eighty-five (5,285) acres, more or less, being all that remains of said northwest quarter (¼) after excepting therefrom one thousand (1,000) acres in the northwest corner thereof and twelve hundred and fifteen (1,215) acres thereof covered by water.

"One thousand (1,000) acres in the northwest corner of said northwest quarter (¼)."

Counsel for plaintiff objected to this deed upon the ground that it was void upon its face for uncertainty of description. The court overruled the objection and received the deed in evidence; to which ruling counsel for plaintiff then and there excepted. (S. M., p. 31.)

Defendant then gave evidence tending to prove that the land in question was again sold by the comptroller for unpaid taxes, at the tax sale of 1885, to the people of the State of New York, and gave in evidence two certificates issued by the comptroller upon said sale, each dated December 29, 1885, one of which showed the sale by the comptroller to the people of the State of New York, for the unpaid taxes of 1852 to 1855, inclusive, and 1877, 1878, and 1879, of a parcel of land therein described as follows:

"Macomb's purchase, Great tract 1, township 24, northwest
36 ¼, ex. 1,000 a. N. W. cor. 6,500 acres," for the sum of $1,323.56; the other of which certificates showed the sale by the comptroller to the people of the State of New York, for the unpaid taxes of 1877, 1878, and 1879, of a parcel of land therein described as follows:

"Macomb purchase, Great tract 1, township 24, northwest ¼ N. W. cor., 1,000 acres," for the sum of $81.23.

Defendant then gave in evidence the deed made by the comptroller to the people of the State of New York in pursuance of the tax sale of 1885, dated February 15th, 1890; recorded in Franklin county clerk's office March 3rd, 1891; which deed was in the usual form of deeds made by the comptroller upon tax sales and purported to convey to the people of the State of New York two parcels of land in the northwest quarter of said township 24 by the following description:

"Macomb's purchase, Great tract one (1), township twenty-four (24), northwest quarter (¼), six thousand five hundred (6,500) acres, more or less, being all that remains of said northwest quarter, ¼, after exceping therefrom one thousand (1,000) acres in the northwest corner thereof, one thousand (1,000) acres in the northwest corner of said northwest quarter."

Defendant then gave evidence tending to prove that the land in question was again sold by the comptroller for unpaid taxes, at the tax sale of 1890, to the people of the State of New York, and offered in evidence the certificate issued by the comptroller to the people of the State of New York upon said tax sale of 1890; which certificate was in the words and figures following:

37 "No. —. Town of Harriettstown.
"Taxes of 1861, 1862, 1863, 1864, and 1865, $3,187.05.

"STATE OF NEW YORK, COMPTROLLER'S OFFICE,
"ALBANY, *December* 23, 1890.

"I certify that at a public auction which commenced December 11th, 1890, and closed this day, duly held by me at the capitol, in the city of Albany, pursuant to chapter thirteen of the first part of the Revised Statutes, in relation to the assessment and collection of taxes, and the acts amendatory thereof, the State purchased the following-described lot of land, situate in the county of Franklin, to be laid out at the expense of the purchasers, namely, Macomb purchase, Great tract 1, township 24, northwest ¼, ex. 1,000 a. N. W. cor., 6,500 acres, for which it has paid the sum of three thousand one hundred and eighty-seven $\frac{5}{100}$ dollars, and which said purchase entitles the people of the State of New York to a deed for said land and to all the benefits secured to purchasers by said statutes, if no person shall within two years from the date hereof redeem the same in pursuance of the provisions of the said statutes.

"EDMUND WEMPLE, *Comptroller.*

"Countersigned.
"SIDNEY W. PARK,
"*Chief Tax Clerk.*"

38 Counsel for plaintiff objected to the said certificate upon the ground that it was not evidence of a conveyance of title, it being at most only evidence of an equitable title, which cannot be considered in an action of ejectment in this court, and that the deed of the comptroller was the best evidence of a conveyance under the tax sale.

The court overruled the objection and received the certificate in evidence; to which ruling counsel for plaintiff then and there excepted.

No comptroller's deed in pursuance of the 1890 tax sale was offered by defendant.

Defendant then gave evidence tending to prove that on or about December 24, 1894, Smith M. Weed, George N. Ostrander, Martin V. B. Turner, Lelia E. Marsh, and John B. Riley, all residents of the State of New York, undertook to organize the plaintiff, and that for this purpose, by several deeds, said Smith M. Weed and others above-named conveyed to Frank E. Smith the lands described in the complaint, and certain other lands described in another action of ejectment now pending in the same court between the same parties, and certain other lands described in the complaint in another action of ejectment brought in this court by the same plaintiff against Ermina P. Hall, and that the certificate of incorporation of the plaintiff in the State of New Jersey was subscribed by said Frank E. Smith and Frank Walling, who is the clerk in said Smith's office, and one McClean; that the said Smith, Walling, and McClean became the sole trustees of said corporation, and
39 that said Smith subscribed for 120 shares of stock of said corporation, and Walling and McClean one share each, upon

the capitalization of said corporation in the sum of $12,200, the par value of each share being $100; that said Frank E. Smith took the land aforesaid, by virtue of said deeds, as trustees for his grantors and deeded the property conveyed by them to him in pursuance of an agreement and understanding that he was to convey the property conveyed to him to the corporation plaintiff, and that when the organization was effected he was to issue back to them shares of stock in proportion as they were interested in the real estate which was paid into the corporation as and for $12,000 of its capital stock; that from the time of the incorporation of the plaintiff down to the time of the commencement of this action the whole property of the plaintiff consisted of said lands in the State of New York and of two books in the office of another corporation in the State of New Jersey, which office the plaintiff claims to use as its office. As a matter of fact, the plaintiff never transacted any business in the State of New Jersey except to hold corporate meetings there. And defendant gave evidence also tending to prove that one of the purposes of said corporation was the bringing of this suit in the United States circuit court; also tending to prove that at the county treasurer's tax sale of 1853 a part of said township described as "N. W. ¼, ex. 1,336 a. said to be under water," leaving 6,164 acres, were sold to Keese and Tomlinson and a certificate of such sale made; that in 1858 Tomlinson conveyed to Barnard, a grantor of plaintiff, all interest acquired by him under such tax sale. No deed by the county judge and treasurer was produced, but the deed from Tomlinson to Barnard recited such a conveyance of the land sold after excepting 1,000 acres, N. W. corner of said N. W ¼, redeemed by Garrett Smith. No deed from Keese to any of plaintiff's grantors was produced. Defendant also gave evidence tending to prove that all of the lands described in the complaint were in the actual possession of the forest commission of the State of New York from 1885 up to the time of the commencement of this action, and that the deeds to the plaintiff were made and executed and delivered at times when the grantor was out of possession of said premises.

Defendant having rested his case, plaintiff in rebuttal gave evidence tending to prove that at the tax sale of 1877 the whole of the northwest quarter of township 24, Great tract one, Macomb's purchase, containing 7,500 acres, was sold by the comptroller as one parcel for the aggregate unpaid taxes of the years 1866, 1867, 1868, 1869, and 1870, amounting, exclusive of interest, to $1,484.59, and with interest and cost of sale added, to $2,756.40; that the taxes of each of the years 1866 and 1867 included in the said sale were assessed and levied against the whole of said quarter as a single and distinct parcel of land, the same having been assessed upon the assessment-roll of the town of Harriettstown in said years in the manner and form following and not otherwise:

41 1866.

Name of tract and description of land.	Number of acres.	Value of land.	Tax.	Highway tax.
Township 24, Great tract 1, Macomb's purchase, N. W. ¼	7,500	$7,000	$409.50	$46.75
1867.				
Township 24, Great tract 1, Macomb's purchase, N. W. ¼	7,500	10,000	350.00	

That in each of the years 1868, 1869, and 1870 the whole of the said northwest quarter of township 24 was not assessed or taxed; that in each of the said years 1868, 1869, and 1870 so much of the said quarter as was assessed and taxed was assessed upon the roll of the town of Harriettstown in the manner and form following, and not otherwise:

1868.

Number of tract and description of land.	Number of acres.	Value of land.	Tax.	Highway tax.	School tax.	Rejected tax.
Township 24, Great tract 1, Macomb's purchase, N. W. ¼, excepting one thousand acres lying in the N. W. corner; also 1,215 acres which *is* water, leaving 5,285 acres	5,285	$6,000	$78.00			
Macomb's purchase, Great tract 1, township 24, 1,000 acres, lying in the northwest corner of northwest ¼	1,000	1,100	14.30			
1869.						
Township 24, Great tract 1, Macomb's purchase, N. W. ¼, excepting one thousand acres lying in the N. W. corner; also 1,215 acres which *is* water, leaving 5,285 acres	5,285	6,000	132.00	$60.00	$39.00	
Macomb's purchase, Great tract No. 1, township 24, 1,000 acres, lying in the northwest corner of the N. W. ¼	1,000	1,100	24.20	11.00	7.15	
1870.						
Township 24, Great tract 1, Macomb's purchase, N. W. ¼, except one thousand acres lying in the N. W. corner; also 1,215 acres which *is* water, leaving 5,285 acres	5,285	4,500	99.90	90.00	16.20	
Macomb's purchase, Great tract No. 1, township 24, 1,000 acres, lying in the N. W. corner of the N. W. quarter	1,000	750	16.65	16.50	2.77	

That the taxes for each of the years 1868, 1869, and 1870, based upon the assessment-rolls for those years, as above set forth,
43 were included in the taxes for which the said sale of 1877 was made.

Plaintiff then gave evidence tending to prove that the northwest quarter of township 24, Great tract one, Macomb purchase, contains, and for more than thirty years has contained, a part of the Lower Saranac lake, a part of Middle Saranac (or Round) lake, and a part of Little Weller pond and a part of the Saranac river, and that it does not and for more than thirty years past it has not contained any other body of water excepting certain marshes along the Lower Saranac lake and along the Saranac river, which were covered with water during a part of the year- 1866 to 1870, inclusive; that no part of either of said bodies of water is within the limits of a parcel of land, laid out in a square form, in the northwest corner of the northwest quarter of said township 24, so as to contain one thousand acres; that the area of that portion of Lower Saranac lake which is contained within the said quarter, exclusive of marshes along said lake, was, in 1895, $947\frac{19}{20}$ acres, including islands therein, and that such islands were estimated to contain 43 acres; that the area of that portion of Round lake (or Middle Saranac) which is contained within the said quarter was $115\frac{2}{10}$ acres, including islands therein, and that such islands were estimated to contain $5\frac{5}{10}$ acres, all in 1895; that the area of that portion of Little Weller pond which is contained within the said quarter is about 20 acres.

Plaintiff then gave evidence tending to prove that at
44 each of the tax sales of 1881, 1885, and 1890, the northwest quarter of township 24, Great tract 1, Macomb purchase, was claimed by the comptroller to be already the property of the State; that the sales book from which the 1881 sale was conducted, containing a description of the different parcels of land liable to be sold at that sale, was prepared in anticipation of the sale; that opposite all lots of land to which the State claimed title a record in pencil was made; that opposite each of the two parcels of the northwest quarter of township 24, Great tract one, Macomb purchase, sold at the 1881 sale, the word "State" was written in pencil upon the said sales book; that on the sale of 1881, when any lot of land against which the word "State" had been written on the sales book was announced to be sold, the person conducting the sale on behalf of the comptroller, as soon as the description of such parcel had been read by the auctioneer, would immediately bid the said lot in for the State, and the auctioneer, without calling for bids and without giving any opportunity to the person attending the sale to bid, would immediately strike such lot off to the State; that any bids which were made or attempted to be made by any person attending the sale for any lot of land against which the word "State" had been written on the sales book were rejected; that in anticipation of the 1885 sale a list of lands claimed to be the property of the States was prepared in the comptroller's office, which list contained the northwest quarter of township 24, Great tract one, Macomb's purchase;

that the procedure on the sale of 1885 was the same as on the
45 1881 sale; that when any lot of land contained in the list of State lands was announced for sale it was immediately bid in for the State, no opportunity being given for other persons to bid thereon, any bids made or attempted to be made by other bidders being rejected; that upon the 1890 tax sale the procedure as to all lands liable to sale thereat, and then claimed by the State, was the same as at the 1881 and 1885 sales, all such lands being at once struck off to the State, but no evidence was offered tending to show that at any of said sales of 1881, 1885, and 1890 any bids whatever were offered by any person whatsoever on the lands in question.

The plaintiff having again rested its case, the defendant then gave evidence tending to prove that during the year 1866 to 1870, inclusive, there was a dam across the outlet of the Lower Saranac lake, built for the purpose of facilitating the driving of logs down the Saranac river; that when the dam was closed the level of the lake was raised to from two to five feet; that when the dam was open, so as to increase the flow of the water in the river, the level of the lake would be drawn down; that by reason of this dam the marsh or low lands near the head of the lake *was* generally covered by water; that the area of land covered by the water of the Lower Saranac lake within the limits of said northwest quarter of township 24 during the years 1866 to 1870, which land is not now so covered,
was, on an average, about two hundred to two hundred and
46 fifty acres; that there were other marshes around Little Weller pond which *was* covered by water in the spring of the year.

When the testimony in the case was closed the counsel for each of the respective parties, with the approval of the court, admitted that there was no question of fact in the case to be submitted to the jury; that the issues depended upon the construction that the court should give to the law; and thereupon the jury was discharged, and a written stipulation waiving a jury trial was signed by the attorneys of record for the respective parties and filed with the clerk.

Thereafter, and in due time, the plaintiff requested the court to affirm each of the following propositions of law, each of which was separately submitted and as a separate and distinct request, independent of the others, namely:

First. Assuming that the sale by the comptroller of the tract of land in controversy was made as one parcel for the aggregate unpaid taxes of several years, which taxes were assessed against separate and distinct parcels of the tract sold, such sale was not authorized by law in 1877. Such mode of sale is a jurisdictional defect in the proceedings, and a sale so made is void and is not cured or validated by chapter 448 of the Laws of 1885 or chapter 711 of the Laws of 1893.

The court refused to so rule; to which refusal counsel for plaintiff then and there excepted.

47 Second. Assuming that the sale by the comptroller of the tract of land in controversy was made as one parcel for the aggregate unpaid taxes of several years, during one or more of

which years a part of the tract sold was not assessed or taxed at all, such sale was not authorized by law in 1877; such mode of sale is a jurisdictional defect in the proceedings, and a sale so made is void and is not cured or validated by chapter 448 of the Laws of 1885 or chapter 711 of the Laws of 1893.

The court refused to so rule; to which refusal counsel for plaintiff then and there excepted.

Third. Assuming that the proof shows a sale by the comptroller of a tract of land as one parcel for the aggregate unpaid taxes of several years, some of which taxes were assessed against the whole tract sold and others against a part of the tract only, such sale was not authorized by law in 1877; such mode of sale would be a jurisdictional defect in the proceedings, and a sale so made is void and is not cured or validated by chapter 448 of the Laws of 1885 or chapter 711 of the Laws of 1893.

The court refused to so rule; to which refusal counsel for plaintiff then and there excepted.

Fourth. An assessment of non-resident land for taxation must describe the land to be taxed, so that the parcel taxed can be identified and distinguished, and a failure to so describe the land to be taxed is a jurisdictional defect in the proceedings, and if the land be sold by the comptroller to enforce payment of taxes so assessed, the sale is void and is not cured or validated by chapter 448
48 of the Laws of 1885 or by chapter 711 of the Laws of 1893.

The court so ruled.

Fifth. If the court shall find that the sale of the land in question at the 1877 tax sale was made for the unpaid taxes of 1866, 1867, 1868, 1869, and 1870, and that the taxes for the years 1868, 1869, and 1870, as against a parcel of 5,285 acres of the tract, were based upon an assessment of the said parcel in which it was described as follows:

Township 24, Great tract 1, Macombe's purchase, N. W. ¼, excepting one thousand acres lying in the N. W. corner; also 1,215 acres which is water, leaving 5,285 acres; and if the court shall also find that the area of land covered by water in said northwest quarter, outside of the one thousand acres in the northwest corner, was substantially more or less than 1,215 acres, then such description was not sufficient to identify the parcel assessed with reasonable certainty, and the taxes based upon such assessment were void and the sale of 1877 was also void; such assessment was a jurisdictional defect in the proceedings and the sale was not cured or validated by chapter 448 of the Laws of 1885 or by chapter 711 of the Laws of 1893.

The court refused to so rule; to which refusal counsel for plaintiff then and there excepted.

Sixth. If the court shall find that the taxes of 1868, as
49 against a parcel of one thousand acres of the tract sold at the 1877 sale, *was* based upon an assessment in which said parcel was described as follows:

"Macomb purchase, Great tract one, township 24, northwest corner of northwest quarter, 1,000 acres," and that the taxes of 1869

and 1870, against said parcel, were based upon assessments in which it was described as follows:

"Great tract No. 1, Macomb's purchase, township 24, 1,000 acres, lying in the northwest corner of the northwest quarter," then such description was not sufficient to identify the parcel assessed with reasonable certainty and the taxes based thereon were void, and if the sale of 1877 was made for such taxes as well as the taxes of other years, such sale was also void; such assessment was a jurisdictional defect in the proceedings, and the sale was not cured or validated by chapter 448 of the Laws of 1885 or by chapter 711 of the Laws of 1893.

The court refused to so rule; to which refusal counsel for plaintiff then and there excepted.

Seventh. If the court shall find that at the sale of 1881 the comptroller treated the land in question as already the property of the State, and struck the same off to the State without giving any opportunity for other persons to bid thereon, then the State acquired no title by reason of such sale, and such sale was not validated or made effectual by chapter 448 of the Laws of 1885 or by chapter 711 of the Laws of 1893.

The court refused to so rule; to which refusal counsel for plaintiff then and there excepted.

50 Eighth. Chapter 448 of the Laws of 1885 is unconstitutional and void and is repugnant to the 14th amendment of the Constitution of the United States.

The court refused to so rule; to which refusal counsel for plaintiff then and there excepted.

Thereafter the court made a general finding in favor of the defendants.

And forasmuch as the matters aforesaid and the rulings of the court thereon do not appear of record, and the time within which a bill of exceptions may be tendered having been enlarged by consent of parties, the plaintiff prays that this its bill of exceptions may be allowed, which is done this 24th day of May, 1898.

ALFRED C. COXE, *U. S. J.*

Indorsed: U. S. circuit court, northern district of N. Y. 3110. The Saranac Land and Timber Company against James A. Roberts, as comptroller of the State of New York. Bill of exceptions. Weeds, Smith & Conway, attorneys for pl'ff, Plattsburgh, New York.

SIR: You will please take notice that the within is the bill of exceptions proposed by plaintiff in the within-entitled action.

Dated March 23, '98.

Yours, &c., WEEDS, SMITH & CONWAY,
Att'ys for Plaintiff, Plattsburgh, N. Y.

To Hon. T. E. Hancock, att'y gen.

Due service of copy of within bill of exceptions as settled this day is hereby admitted.
May 24, 1898.

T. E. HANCOCK,
Att'y Gen'l, Att'y for Def't.

Filed May 24, 1898.

W. S. DOOLITTLE, *Clerk.*

51 United States Circuit Court, Northern District of New York.

THE SARANAC LAND AND TIMBER COMPANY, Plaintiff,
against
JAMES A. ROBERTS, as Comptroller of the State of New York, Defendant. } Law. 3110.

It is hereby stipulated and agreed that the judgment-roll in the above-entitled action be amended by striking therefrom the following papers: First, the original answer, the same having been superseded by the amended answer.
Dated May 26, 1898.

T. E. HANCOCK,
Attorney General, Att'y for Def't.
WEEDS, SMITH & CONWAY,
Att'ys for Pl'ff.

Indorsed: Stipulation. Filed Jun- 3, 1898. W. S. Doolittle, clerk.

52 United States Circuit Court, Northern District of New York.

THE SARANAC LAND AND TIMBER COMPANY
vs.
JAMES A. ROBERTS, as Comptroller of the State of New York.

Demurrer. In ejectment.

Weeds, Smith & Conway and Frank Smith, for the plaintiff.
T. E. Hancock, attorney general, and G. D. B. Hasbrouck, deputy attorney general, of New York, for the defendant.

COXE, *J.:*

This is an action of ejectment. The plaintiff is a New Jersey corporation. The defendant is the comptroller of the State of New York. The complaint alleges that the plaintiff is seized in fee-simple and entitled to the possession of a large tract of forest land situated in Franklin county, within the northern district of New York, and that the defendant, as comptroller, is in actual possession of said land and unlawfully withholds the possession thereof from the plaintiff.

The defendant demurs upon the ground that the court has no jurisdiction, for the reason that the real party in interest is the State of New York, and the State cannot be sued.

The situation, then, is this: A citizen of New Jersey who
53 is the owner in fee of land in this district sues in ejectment a citizen of New York who is in unlawful possession of the plaintiff's land. All this is admitted by the demurrer. The sole question is, Does the fact that the defendant holds as comptroller of the State deprive the court of jurisdiction? As the issue now stands, the defendant is a naked trespasser, in possession of plaintiff's land without color of right. It is thought that the demurrer should be overruled on the authority of United States *v.* Lee, 106 U. S., 196–204; Tindall *v.* Wesley, 65 Fed. Rep., 731; Pennoyer *v.* McConnaughy, 140 U. S., 1, and cases there cited.

The court cannot anticipate what defense the defendant will interpose. He may seek to justify under an unconstitutional law or a law conferring no valid title. If the allegation be true that the plaintiff is the owner in fee and entitled to the possession of the land in question, it is not easy to see how he can defend under a valid law. The mere fact that he is sued as comptroller is not enough to oust the court of jurisdiction. The complaint shows nothing more.

But suppose the court proceeds a step further and assumes that the defendant is sued and will justify under chapter 711 of the Laws of 1893. Section 13 of that act provides:

"The comptroller may advertise once a week for at least three weeks successively, a list of the wild, vacant and forest lands to which the State holds title, from a tax sale or otherwise, in one or more newspapers to be selected by him, published in the county in which the lands are situated, and from and after the expiration of such time, all such wild, vacant, or forest lands are hereby declared to be and shall be deemed to be in the actual possession of the comptroller, and such possession shall be deemed to continue until he has been dispossessed by the judgment of a court of competent jurisdiction."

54 This section must be considered in its entirety. The last clause cannot be ignored. It would seem clear that it was the intention of the legislature to submit the question of the comptroller's title to the decision of a court having jurisdiction. It was conceded at the argument that the theory of the demurrer made the clause in question inoperative, and would enable the defendant to seize and hold the property of others without being amenable to the process of any court. There is no occasion for so drastic a construction. In placing the comptroller in possession of the forest lands the legislature recognized the probability of controversies over his title and pointed out the manner in which such dispute should be decided. The plaintiff is pursuing the remedy of the statute. It is a suit sanctioned by the State.

Regan *v.* Trust Co., 154 U. S., 362, 392.

The demurrer is overruled.

Indorsed: Decision. Coxe, J. Filed Jun- 28, 1895. W. S. Doolittle, clerk.

55 United States Circuit Court, Northern District of New York.

THE SARANAC LAND AND TIMBER COMPANY
vs.
JAMES A. ROBERTS, as Comptroller, etc.

At law. Tried by the court for decision on demurrer. See 68 Fed. Rep., 521.

Frank E. Smith and Weeds, Smith and Conway, for the plaintiff; T. E. Hancock, G. D. B. Hasbrouck, E. H. Leggett, and John H. Burke, for the defendant.

COXE, *J.*:

I am of the opinion that this cause must be decided in favor of the defendant upon the authority of People *v.* Turner, 145 N. Y., 451, affirmed by the Supreme Court of the United States October 18, 1897. By these decisions the constitutionality of chapter 448 of the Laws of New York of 1885 is affirmed, and its validity, as a curative act and as a short statute of limitations, is fully recognized. The defects involved in the Turner case were similar to and in some instances identical with those relied on by the plaintiff in the case at bar.

56 Assuming these defects to be proved, they were irregularities which were cured by the act of 1885. The plaintiff has failed to show either the payment of the taxes or that they were levied without legal right; in other words, it has failed to show jurisdictional errors such as would render the assessment proceedings void and which the legislature had no power to remedy.

The court cannot adopt the view of the learned counsel for the plaintiff in his ingenious effort to prove that the constitutionality of the act of 1885 is still an open question. His argument is sufficiently answered by the plain and unequivocal language of the supreme court as follows:

"It was argued in behalf of the plaintiff in error that the statute was unconstitutional because it did not allow him any opportunity to assert his rights, even within six months after its passage; but the statute did not take away any right of action which he had before its passage, but merely limited the time within which he might assert such a right. Within the six months he had every remedy which he would have had before the passage of the statute. If he had no remedy before, the statute took none away. From the judgments of the court of appeals in the case at bar and in the subsequent case of People *vs.* Roberts, 151 N. Y., 540, there would appear to have been some difference of opinion in that court upon the question whether his proper remedy was by direct application to the comptroller to cancel the sale or by action of ejectment against the comptroller or the forest commissioners; but as that court has uniformly held that he had a remedy, it is not for us to determine what that remedy was under the local constitution and laws."

The plaintiff has failed to prove that it "is seized in fee-simple and entitled to the possession" of the lands in dispute.

The complaint is dismissed with costs.

Indorsed: Decision. Coxe, J. Filed Nov. 12, 1897. W. S. Doolittle, clerk.

57 U. S. Circuit Court, Northern District of New York.

THE SARANAC LAND AND TIMBER COMPANY
against
JAMES A. ROBERTS, as Comptroller of the State of New York. } Law. 3110.

To the honorable the judges of the said circuit court:

The petition of the Saranac Land and Timber Company respectfully shows:

I. That on or about January 24th, 1895, it brought this action of ejectment in this court against the defendant to recover possession of a tract of 7,500 acres of land situate in the town of Harriettstown, Franklin county, New York, known as the northwest quarter of township 24, Great tract one, Macomb's purchase.

II. That this action was brought to trial in March, 1896, and on February 17th, 1898, judgment was entered herein in favor of defendant, by which it was adjudged that plaintiff was not entitled to the possession of said land, and that the people of the State of New York were the owners in fee-simple of the said land and entitled to the possession thereof.

III. That, as your petitioner is informed and believes, the value of the land sought to be recovered in this action is much more than five thousand dollars, as will more fully appear by the affi-
58 davit of Smith M. Weed, hereto annexed; that in March, 1896, defendant, on a motion to postpone the trial of this cause and another of a similar nature, between the same parties, affecting the west half of the northeast quarter of the same township, containing 3,750 acres, being a parcel of land contiguous to that affected by this action and substantially the same in character, both tracts being wild, vacant forest land, wholly unimproved, made and filed an affidavit in which he stated as follows:

"That said action involves the title of the State to certain wild forest lands in the forest preserve of said State, the value of which land is upwards of two hundred thousand dollars."

IV. That, as your petitioner is advised by counsel and believes, upon the trial of this action certain errors were committed by the trial judge to the prejudice of your petitioner, and that the judgment rendered against it, as aforesaid, is erroneous and against your petitioner's right to recover the aforesaid land.

V. That, as your petitioner is advised by counsel and believes, this case is one in which a law of the State of New York, to wit, chapter 448 of the Laws of 1885, is claimed by plaintiff to be in contravention of the Constitution of the United States.

Wherefore your petitioner prays that a writ of error, returnable into the Supreme Court of the United States, may be allowed, and that a citation issue to the defendant.

THE SARANAC LAND & TIMBER COMPANY,
By WEEDS, SMITH & CONWAY,
Its Attorneys.

59 CITY AND COUNTY OF NEW YORK, *ss:*

Frank E. Smith, being duly sworn, says:

I am treasurer of the Saranac Land and Timber Company. I have read the foregoing petition for a writ of error and know the contents thereof, and the same is true of my own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

FRANK E. SMITH.

Sworn to before me this — day of May, 1898.

——— ———.

60 U. S. Circuit Court, Northern District of New York.

THE SARANAC LAND AND TIMBER COMPANY *against* JAMES A. ROBERTS, as Comptroller of *of* the State of New York. } Law. 3110.

CITY AND COUNTY OF NEW YORK, *ss:*

Smith M. Weed, being duly sworn, says:

I. I reside at Plattsburgh, New York.

II. I have been familiar with wild forest lands in the county of Franklin, New York, and especially in the town of Harriettstown, in said county, for more than twenty years. I have individually bought and sold many lots and parcels of wild lands in said county, and I am familiar with the prices and values of such lands.

III. I know the northwest quarter of township 24, Great tract one, Macomb's purchase, containing 7,500 acres, and being the tract of land sought to be recovered in the above action.

IV. The value of said tract of land, in my opinion, is at least the sum of ten dollars per acre, or seventy-five thousand dollars ($75,000.00).

SMITH M. WEED.

Sworn before me this — day of May, 1898.

——— ———.

Indorsed: Petition for writ of error to supreme court and citation and affidavit of Smith M. Weed. Filed May 24, 1898. W. S. Doolittle, clerk.

61 *Bond for Costs.*

Circuit Court of the United States of America for the Northern District of New York, in the Second Circuit.

THE SARANAC LAND AND TIMBER COMPANY, Plaintiff in Error,
vs.
JAMES A. ROBERTS, as Comptroller of the State of New York, Defendant in Error.

Know all men by these presents that we, Smith M. Weed and Frank E. Smith, both of Plattsburgh, New York, are held and firmly bound unto the above-named James A. Roberts, as comptroller, in the sum of five hundred ($500.00) dollars, to be paid to the said Roberts, as comptroller; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the — day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas the above-named The Saranac Land and Timber Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-
62 entitled suit by the judge of the circuit court of the United States for the northern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named plaintiff shall prosecute the said suit to effect and answer all costs if it fail to make the said writ good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

SMITH M. WEED. [SEAL.]
FRANK E. SMITH. [SEAL.]

Sealed and delivered and taken and acknowledged this — day of May, 1898, before me.

— —.

NORTHERN DISTRICT OF NEW YORK, } ss:
County of Oneida,

On this 24th day of May, 1898, before me personally came Frank E. Smith, to me personally known to be one of the persons described in and who executed the foregoing bond, and acknowledged that he executed the same.

C. W. HIGGISON,
Notary Public.

UNITED STATES OF AMERICA, } ss:
Northern District of New York,

Smith M. Weed and Martin V. B. Turner, each being duly sworn, depose and say, each for himself, that he is a freeholder in

63 the northern district of New York; that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

SMITH M. WEED.
MARTIN V. B. TURNER.

Sworn to this 23d day of May, A. D. 1898, before me—

WARREN DOW,
[L. S.] *Notary Public, Clinton Co.*

NORTHERN DISTRICT OF NEW YORK, *Oneida County,* } ss:

Frank E. Smith, being duly sworn, says that he is worth the sum of $1,000.00 over and above all his debts and liabilities.

FRANK E. SMITH.

Sworn before me this 24th day of May, 1898.

C. W. HIGGISON,
Notary Public, Oneida Co., N. Y.

Indorsed: Bond for costs on error to U. S. Supreme Court. Approved. A. C. Coxe, U. S. J. Filed May 24, 1898. W. S. Doolittle, clerk.

64 U. S. Circuit Court, Northern District of New York.

THE SARANAC LAND AND TIMBER COMPANY, Plaintiff,
against
JAMES A. ROBERTS, as Comptroller of the State of New York, Defendant. } Law. 3110.

Assignment of Errors and Prayer for Reversal.

The plaintiff above named, The Saranac Land and Timber Company, hereby alleges that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

First. That the court erred in refusing to affirm the first proposition of law submitted by the plaintiff, as follows:

"First. Assuming that the sale by the comptroller of the tract of land in controversy was made as one parcel for the aggregate unpaid taxes of several years, which taxes were assessed against separate and distinct parcels of the tract sold, such sale was not authorized by law in 1877, such mode of sale is a jurisdictional defect in the proceedings, and a sale so made is void, and is not cured or validated by chapter 448 of the Laws of 1885 or chapter 711 of the Laws of 1893."

65 Second. That the court erred in refusing to affirm the second proposition of law submitted by the plaintiff, as follows:

"Second. Assuming that the sale by the comptroller of the tract of land in controversy was made as one parcel for the aggregate unpaid taxes of several years, during one or more of which years a

part of the tract sold was not assessed or taxed at all, such sale was not authorized by law in 1877; such mode of sale is a jurisdictional defect in the proceedings, and a sale so made is void and is not cured or validated by chapter 448 of the Laws of 1885 or chapter 711 of the Laws of 1893."

Third. That the court erred in refusing to affirm the third proposition of law submitted by the plaintiff, as follows:

"Third. Assuming that the proof shows a sale by the comptroller of a tract of land as one parcel for the aggregate unpaid taxes of several years, some of which taxes were assessed against the whole tract sold and others against a part of the tract only, such sale was not authorized by law in 1877; such mode of sale would be a jurisdictional defect in the proceedings, and a sale so made is void and is not cured or validated by chapter 448 of the Laws of 1885 or chapter 711 of the Laws of 1893."

Fourth. That the court erred in refusing to affirm the fifth proposition of law submitted by the plaintiff, as follows:

66 "Fifth. If the court shall find that the sale of the land in question at the 1877 tax sale was made for the unpaid taxes of 1866, 1867, 1868, 1869, and 1870, and that the taxes for the years 1868, 1869, and 1870, as against a parcel of 5,285 acres of the tract sold, were based upon an assessment of the parcel in which it was described as follows:

"Township 24, Great tract 1, Macomb's purchase, N. W. ¼, excepting one thousand acres lying in the N. W. corner; also 1,215 acres which is water, leaving 5,285 acres;

"And if the court shall also find that the area of land covered by water in said northwest quarter, outside of the one thousand acres in the northwest corner, was substantially more or less than 1,215 acres, then such description was not sufficient to identify the parcel assessed with reasonable certainty, and the taxes based upon such assessment were void and the sale of 1877 was also void; such assessment was a jurisdictional defect in the proceedings, and the sale was not cured or validated by chapter 448 of the Laws of 1885 or by chapter 711 of the Laws of 1893."

Fifth. That the court erred in refusing to affirm the sixth proposition of law submitted by the plaintiff, as follows:

"Sixth. If the court shall find that the taxes of 1868, as
67 against a parcel of one thousand acres of the tract sold at the 1877 sale, were based upon an assessment in which said parcel was described as follows:

"Macomb's purchase, Great tract one, township 24, northwest corner of northwest quarter, 1,000 acres;

"And that the taxes of 1879 and 1870 against said parcel were based upon assessments in which it was described as follows:

"Great tract No. 1, Macomb's purchase, township 24, 1,000 acres lying in the northwest corner of the northwest quarter;

"Then such description was not sufficient to identify the parcel assessed with reasonable certainty and the taxes based thereon were void; and if the sale of 1877 was made for such taxes, as well as the taxes of other years, such sale was also void; such assessment

was a jurisdictional defect in the proceedings, and the sale was not cured or validated by chapter 448 of the Laws of 1885 or by chapter 711 of the Laws of 1893."

Sixth. That the court erred in refusing to affirm the seventh proposition of law submitted by the plaintiff, as follows:

"Seventh. If the court shall find that at the sale of 1881 the comptroller treated the land in question as already the property of the State and struck the same off to the State without giving any opportunity for other persons to bid thereon, then the State acquired no title by reason of such sale, and such sale was not validated
68 or made effectual by chapter 448 of the Laws of 1885 or by chapter 711 of the Laws of 1893."

Seventh. That the court erred in refusing to affirm the eighth proposition of law submitted by the plaintiff, as follows:

"Eighth. Chapter 448 of the Laws of 1885 is unconstitutional and void and is repugnant to the 14th amendment of the Constitution of the United States."

Eighth. That the court erred in receiving in evidence the deed made by the comptroller to the people of the State of New York in pursuance of the tax sale of 1881, dated October 31st, 1884, which deed purported to convey to the people of the State of New York two parcels of land in the northwest quarter of township 24 by the following description:

"Macomb's purchase, Great tract 1, township 24, northwest quarter, 5,285 acres, more or less, being all that remains of the said northwest quarter after excepting therefrom 1,000 acres in the northwest corner thereof and 1,215 acres thereof covered by water.

"1,000 acres in the northwest corner of the northwest quarter."

And in overruling the plaintiff's objections to the said deed that it was void upon its face for uncertainty of description.

69 Ninth. That the court erred in receiving in evidence the certificate of sale issued by the comptroller to the people of the State of New York upon the tax sale of 1890, and in overruling the objection of the plaintiff to said certificate that it was not evidence of a conveyance of the title, but at most only evidence of an equitable title, which could not be considered in an action of ejectment in this court, and that the deed of the comptroller was the best evidence of a conveyance under the tax sale.

Wherefore the said plaintiff, The Saranac Land and Timber Company, prays that the judgment rendered against it in the above-entitled action may be reversed.

WEEDS, SMITH & CONWAY,
Attorneys for Plaintiff, Plattsburgh, New York.

Indorsed: Assignment of errors and prayer for reversal. Filed May 24, 1898. W. S. Doolittle, clerk.

70 By the Honorable Alfred C. Coxe, one of the judges of the circuit court of the United States for the northern district of New York, in the second circuit.

To James A. Roberts, as comptroller of the State of New York, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the Capitol, in the city of Washington, on the 23 day of June, 1898, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of New York, wherein The Saranac Land and Timber Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand, in the city of Utica, in the district and circuit above named, this 24th day of May, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of these United States the one hundred and twenty-second.

ALFRED C. COXE,
Judge of the Circuit Court of the United States for the Northern District of New York, in the Second Circuit.

71 [Endorsed:] At law. No. 3110. United States Supreme Court. The Saranac Land and Timber Company, pl'ff in error, *vs.* James A. Roberts, as comptroller, &c., d'f't in error. Original citation. Weeds, Smith & Conway, Plattsburgh, N. Y. D. C. N. Service of copy of the within citation is hereby admitted this 1st day of June, 1898. T. E. Hancock, attorney general. U. S. circuit court, N. D. of N. Y. Filed Jun- 3, 1898. W. S. Doolittle, clerk.

Endorsed on cover: Case No. 16,916. N. New York C. C. U. S. Term No., 331. The Saranac Land and Timber Company, plaintiff in error, *vs.* James A. Roberts, as comptroller of the State of New York. Filed June 20th, 1898.